



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1315/P1
TJD:sac/mf

RMA

In: 10/22

Due Fri
10/25 if possible

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

gen cat

1 **AN ACT to renumber and amend** 55.02 (3); **to amend** 51.01 (13) (b), 51.15 (1)

2 (a) (intro.), 51.61 (1) (intro.), 51.67, 55.10 (1), 55.12 (2), 55.135 (1), 55.14 (1) (b)

3 (intro.), 55.14 (1) (b) 2., 55.14 (3) (e) (intro.) and (4), 55.15 (1) and 55.18 (1) (b);

4 and **to create** 51.01 (4v), 51.12, 51.15 (1m), 51.20 (1) (a) 1m., subchapter I (title)

5 of chapter 55 [precedes 55.001], 55.01 (1x), 55.01 (1y), 55.02 (3) (a) and (b), 55.13

6 (6), 55.14 (3) (em) and (4m), subchapter II (title) of chapter 55 [precedes 55.50],

7 55.50, 55.55, 55.59, 55.61, 55.65, 55.67, 55.70, 55.73 and 55.74 of the statutes;

8 **relating to:** psychiatric and behavioral care and treatment for individuals

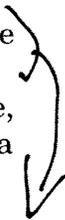
9 with dementia, dementia care units, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a



report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

****NOTE: Please note that I did not review the prefatory note and did not change the prefatory note to correspond to changes in the draft.

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Legal Interventions for Persons With Alzheimer's Disease and Related Dementias.

Overview

The draft creates a new subchapter in ch. 55 titled "Psychiatric and Behavioral Care for Individuals With Dementia". The subchapter applies to the provision of behavioral and psychiatric evaluation, diagnosis, services and treatment and the involuntary administration of psychotropic medication to individuals with dementia to address or alleviate symptoms or conditions associated with dementia, mental illness, and other psychiatric conditions.

The draft specifies that individuals with dementia are not subject to ch. 51 emergency detention and involuntary commitment procedures. The draft creates alternative procedures within ch. 55 under which individuals with dementia may be protectively placed or transferred to dementia crisis units, in a planned manner or in an emergency situation, for the purpose of behavioral or psychiatric evaluation, diagnosis, services, or treatment.

"Dementia" is defined under the draft for purposes of chs. 51 and 55 as deterioration or loss of intellectual faculties, reasoning power, memory, and will due to organic brain disease characterized by confusion, disorientation, apathy, or stupor of varying degrees that is not capable of being reversed and from which recovery is impossible. Dementia includes, but is not limited to, Alzheimer's disease.

The draft specifies that for the purposes of chs. 51 and 55, a person who is competent is not considered to have dementia. This distinction is made because there may be cases in which an individual is diagnosed with dementia but is still legally competent. This could be the case if a person is diagnosed at a very early stage of the disease. Because the person is still competent, they would not be eligible for protective services or treatment under ch. 55. However, the draft provides that a person with dementia is not subject to ch. 51. Thus, the draft states that an individual who is competent is not considered to have dementia so that there is a legal avenue to have a competent person with dementia involuntarily admitted for psychiatric care or treatment.

"Dementia crisis unit" is defined as a unit or part of a unit of a public or private facility that has been identified by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care, services, and treatment to individuals with dementia and that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises, but the capacity to provide diagnosis and treatment for medical conditions must be available.

Applicability of Ch. 51 Emergency Detention, Involuntary Commitment, and Conversion to Individuals With Dementia

The draft specifies that “mental illness”, for purposes of ch. 51 involuntary commitment, does not include dementia.

The draft specifies that a law enforcement officer may take a person into custody for emergency detention or involuntary commitment under ch. 51 only if, based on observation and currently available information, the individual does not appear to have dementia.

The draft specifies that a person who has dementia or who, based on observation and currently available information, appears to have dementia, may not be detained or involuntarily committed under ch. 51.

Under current law, if the court determines, after a hearing on probable cause for involuntary commitment under ch. 51, that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may appoint a temporary guardian and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and must proceed as if a petition had been made for guardianship and protective placement or services. This procedure is commonly referred to as a “conversion” from ch. 51 to ch. 55. Under current law, if the individual is in a ch. 51 treatment facility at the time of conversion, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

The draft specifies that if an individual is in a ch. 51 treatment facility at the time of conversion, and the individual has dementia, the individual may continue to be held in that facility only if the facility is identified by a county as a dementia crisis unit, as described below, and the unit provides an environment that is appropriate for the individual.

Requirement That Corporation Counsel Assist in Prosecuting Conversion Cases

Current law provides that the corporation counsel of the county in which a petition under ch. 55 is brought may, or if requested by the court, must, assist in conducting proceedings under this chapter.

The draft specifies that the corporation counsel of the county in which a petition under ch. 55 is brought must assist in conducting ch. 55 proceedings if both of the following are true: (a) the proceedings were initiated under ch. 51 and subsequently converted to ch. 55 proceedings; and (b) the subject individual has dementia.

County Designation of Dementia Crisis Unit for Emergency and Temporary Protective Placements

The draft requires each county department to identify at least one location as a dementia crisis unit for the purpose of emergency and temporary protective placement for behavioral or psychiatric evaluation, diagnosis, services, or treatment. The county may not identify a location as a dementia crisis unit under this subdivision unless it finds that the location is qualified and equipped to provide, and competent in providing, the diagnosis, evaluation and treatment of dementia and medical, psychiatric, and behavioral care to individuals with dementia and it provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises, but the capacity to provide diagnosis and treatment for medical conditions must be available.

The draft requires the county department to solicit information and advice from the public, including family caregivers of individuals with dementia, organizations concerned with Alzheimer’s disease and dementia, the treatment of mental illness or the provision of long-term care, and any other appropriate individuals or organizations, to aid it in carrying out its responsibility to designate one or more locations as dementia crisis units.

The county department must implement a procedure to periodically review and update the designation of one or more locations as dementia crisis units as necessary and appropriate.

County and Department of Health Services Reports

The draft requires each county department to prepare and submit a report to the Department of Health Services (DHS) that identifies each location that it has designated as a dementia crisis unit for the purpose of emergency and temporary protective placements. The report must specify the capacity of each designated unit, describe the process used to solicit information and advice from the public and summarize the information and advice received. The report must be updated whenever the county newly designates a unit or revokes a unit's designation.

The draft also requires each county department to annually prepare and submit a report to DHS that states the total number of petitions for emergency protective placement or temporary transfer of an individual with dementia to a dementia crisis unit filed in the county and the total number of those petitions that resulted in a placement in a dementia crisis unit.

The draft requires DHS, by June 30 of each even-numbered year, to submit to the legislature a report that includes all of the following:

(a) Identification of the dementia crisis units designated by counties and the capacity of those units, as provided in reports submitted to DHS by county departments.

(b) A summary of the procedures used by counties to solicit information and advice from the public when making dementia crisis unit designations, as provided in reports submitted to DHS by county departments.

(c) A summary of the information provided to DHS by counties regarding the number of petitions filed for emergency protective placement or temporary transfer of an individual with dementia to a dementia crisis unit.

IAPM as an Emergency Protective Service for Individuals With Dementia

Current Law

Under current law, involuntary administration of psychotropic medication (IAPM) may be ordered as a protective service under s. 55.14, stats. "Involuntary administration of psychotropic medication" means any of the following:

1. Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.
2. Forcibly restraining an individual to enable administration of psychotropic medication.
3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

Under current law, all of the requirements applicable to a petition for protective services must be met, including the filing of a petition for guardianship if the individual does not already have a guardian. In addition, a petition continuing extensive allegations specific to the issue of IAPM must be filed, a guardian ad litem must make a report to the court, the individual's physician must provide a detailed written statement, and the individual has a right to an independent medical or psychological examination. The court must hold a hearing on the petition for IAPM within 30 days. If the individual does not already have a guardian, a petition for guardianship must be heard, and a guardian appointed, before the hearing on the petition for IAPM. IAPM may not begin until the court has issued the order.

Under current law, emergency protective services may be provided to an individual for up to 72 hours, without a court order, if there is reason to believe that if those services are not provided, the individual, or others, will incur a substantial risk of serious physical harm. The services may not be provided for longer than 72 hours unless a petition for protective services is filed, a hearing is held, and the court finds probable cause to believe the criteria for the provision of protective services exist. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective services.

There is some disagreement as to whether, under current law, IAPM may be provided as an emergency protective service under s. 55.135, stats.

The Draft

The draft creates a procedure under which IAPM may be provided as an emergency protective service to an individual with dementia, or a person who, based on observation and currently available information, appears to have dementia. The draft specifies that IAPM may be provided as an emergency protective service to these individuals only by following the procedures created in the draft.

The draft does not specify whether, or by what procedures, IAPM may be provided as an emergency protective service to individuals who do not have, or do not appear to have, dementia.

Under the draft, IAPM may be provided as an emergency protective service for an individual with dementia only if all of the following are true:

- (a) A physician has prescribed the psychotropic medication for the individual.
- (b) The individual is not competent to refuse psychotropic medication. “Not competent to refuse psychotropic medication” means that, as a result of dementia, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:
 - (1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.
 - (2) The individual is substantially incapable of applying an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment to his or her condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.
- (c) The individual’s condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.
- (d) Unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.
- (e) If the individual is not currently placed in a dementia crisis unit, unless psychotropic medication is administered involuntarily, there is a substantial likelihood that the individual may be subject to involuntary admission to a dementia crisis unit for psychiatric treatment.
- (f) If the individual resides in a nursing home, community-based residential facility, adult family home, or residential care apartment complex (“a facility”), all of the following are true:

1. A physical examination of the individual has been conducted, and a physician has determined with reasonable probability and documented in writing that the behavior

is not caused by a physical condition or illness that could be treated successfully by means other than psychotropic medication.

2. The facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.

3. The facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

(g) The individual meets the standards for protective services under s. 55.08 (2), stats.

If the individual is under guardianship, a good faith effort to obtain the consent of the guardian must be made before involuntary administration of psychiatric medication is provided as an emergency protective service.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must immediately file a petition for IAPM to the individual as a protective service under s. 55.14, stats. The petition must meet all of the requirements of s. 55.14, stats. (The draft makes changes to the required contents of a petition for IAPM as a protective service for an individual with dementia. Those changes are described below.)

The petition must be served on the individual, the individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the county department.

A preliminary hearing must be held within 72 hours of administration of the first dose of psychotropic medication, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present.

The county department or agency that provides IAPM as an emergency protective service must provide the individual with written notice and orally inform the individual of the time and place of the preliminary hearing.

If the court finds probable cause to believe that the criteria under s. 55.14, stats., are present and that the medication will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings, it may order IAPM to continue to be provided as an emergency protective service for up to 30 days pending the hearing under s. 55.14, stats.

If the individual is not under guardianship, a petition for guardianship must be filed at the same time that the petition for IAPM as a protective service is filed. If IAPM is ordered for an individual who does not have a guardian, the court must appoint a temporary guardian for the individual.

IAPM as a Non-Emergency Protective Service for Individuals With Dementia

Evidence of Harm, Impairment, Injury or Debilitation

Current Law. Under current law, IAPM may not be ordered as a protective service unless, in addition to other requirements, it is shown that unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation must be evidenced by one of the following:

1. The individual's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the individual's failure to participate in treatment,

including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), stats., a settlement agreement approved by a court under s. 51.20 (8) (bg), stats., or commitment ordered under s. 51.20 (13), stats.

2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., stats.

The Draft. The evidence of the substantial probability of physical harm, impairment, injury, or debilitation that is required under current law is linked to standards and findings under ch. 51, stats. The draft specifies that individuals with dementia are not subject to ch. 51 detention and involuntary commitment procedures. Accordingly, the draft changes the evidence required to prove a substantial probability of physical harm, impairment, injury, or debilitation for cases in which the individual who is the subject of the petition has dementia. Specifically, the draft removes specific references to provisions in ch. 51 and replaces them with new provisions which are modeled on the standards of ch. 51 but modified to be more appropriate for cases involving individuals with dementia. Under the draft, for individuals with dementia, the substantial probability of physical harm, impairment, injury, or debilitation must be shown by evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions of the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

Physician Statement

Current Law. Under current law, a petition for IAPM as a protective service must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication.

The Draft. Under the draft, if the individual has dementia, the physician statement must also state that a physical examination of the individual has been conducted and, based on that examination, a physician has determined with reasonable probability that the behavior for which treatment with psychotropic medication is sought is not caused by a physical condition or illness that could be treated successfully by means other than psychotropic medication.

Requirement Applicable to Certain Long-Term Care Facilities

Current Law. Current law authorizing IAPM as a protective service does not contain any requirements regarding efforts made by a long-term care facility to address behaviors by means other than psychotropic medication.

The Draft. Under the draft, if the individual who is the subject of a petition for IAPM has dementia and resides in a nursing home, a community-based residential facility, an adult family home, or a residential care apartment complex, the petition must allege that reasonable efforts have been made to address or accommodate the behavior or condition for which treatment with psychotropic medication is sought. Evidence of the facility's response to the individual's behavior or condition, as documented in records maintained by the facility, must be attached to the petition.

Emergency Protective Placement of an Individual With Dementia in an Dementia Crisis Unit

Current Law

Under current law, an individual may be placed in a protective placement facility (but not a dementia crisis unit) without a court order if it appears probable that an

individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed. This is referred to as an “emergency protective placement”.

The person making the emergency protective placement must file a petition for permanent protective placement, and a probable cause hearing must be held within 72 hours. If probable cause for permanent protective placement is found, the court may order temporary protective placement in the dementia crisis unit for up to 30 days pending the final hearing on permanent placement.

Under current law, emergency protective placement may not be made to a unit for the acutely mentally ill, and no individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20.

The Draft

The draft allows a sheriff, police officer, fire fighter, guardian, or authorized representative of a county department or an agency with which it contracts to take an individual into custody and transport them to a medical facility or a dementia crisis unit if it appears probable that the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others as a result of dementia, mental illness, or a psychiatric condition if not immediately placed and, in addition, all of the following are true:

(a) The individual has dementia, or based on observation and currently available information, it appears probable that the individual has dementia.

(b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.

(c) It appears probable that unless the individual is admitted to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability shall be manifested by evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

An individual who has been detained as described above may be admitted to a dementia crisis unit as an emergency protective placement if both of the following are true:

(a) A physical examination of the individual has been conducted and a physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than a dementia crisis unit and the physician recommends that the individual be placed in a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

(b) The placement is in an environment that is appropriate for the individual.

The person who takes an individual into custody must prepare a statement at the time of detention providing specific factual information concerning the person's

observations, or reports made to the person and the basis for emergency placement. If the individual is admitted to a dementia crisis unit, the statement must be filed with the director of the dementia crisis unit. The director or designee must provide the individual with a copy of the statement by the person making emergency protective placement.

If the individual was detained at a facility other than the dementia crisis unit to which they are admitted, an individual who is authorized to detain the individual may transport them to the dementia crisis unit.

At the time of admission, the director of the dementia crisis unit, or the director's designee, must inform the individual, orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense.

False Statements; Liability. The draft provides that whoever signs a statement, described above, while knowing the information in the statement is false, is guilty of a Class H felony. The draft also provides that a person who acts in accordance with any of the provisions pertaining to emergency protective placement is not liable for any actions performed in good faith.

Petition. The person making the emergency protective placement must file a petition for protective placement that alleges that all of the items listed in items (a) through (e), above, are true.

Probable Cause Hearing. A probable cause hearing must be held within 96 hours of detention, excluding Saturdays, Sundays, and legal holidays. An individual is considered to be detained when he or she is taken into custody for the purpose of emergency protective placement. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed, but in no case may the postponement exceed 7 days from the date of emergency protective placement. If the individual is not under guardianship, a petition for guardianship must accompany the petition for protective placement. The draft provides that if the court finds that protective placement is not appropriate, the court may elect to treat a petition for protective placement under this section as a petition for involuntary commitment under ch. 51. This is identical to a provision in current law that applies to petitions for emergency protective placement.

Order for Temporary Protective Placement in a Dementia Crisis Unit. The court may, at the probable cause hearing, order temporary protective placement of the individual in a dementia crisis unit for up to 45 days, pending the hearing on the petition for permanent protective placement. The court may make this order if it finds probable cause to believe that the existing grounds for emergency protective placement exist and all of the allegations listed in items (a) through (e), above, are true. The court may order protective services as may be required.

Transportation Upon Discharge. The order, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the dementia crisis unit.

Final Hearing on Protective Placement. The hearing on permanent protective placement must be held within 45 days after the emergency protective placement in a dementia crisis unit. At the hearing on the permanent protective placement petition, the court may order placement in a protective placement facility, but not a dementia crisis unit. If continued placement in the dementia crisis unit is desired, a petition for extension of the order for temporary placement must be filed, as described below. Current law provides the right to a jury trial if demanded by the individual sought to be protected or

his or her attorney or guardian ad litem. The court must require a comprehensive evaluation of the individual, and the individual has the right to secure an independent evaluation as provided in s. 55.11 (2).

Extension of Temporary Protective Placement in a Dementia Crisis Unit

Under the draft, the order for temporary placement in the dementia crisis unit may be extended for 60 days beyond the initial 45-day temporary placement period if certain requirements are met. A petition for extension of the temporary placement must be filed prior to the hearing on the petition for permanent protective placement. If the court orders permanent protective placement of the individual, the hearing on the petition for extension is held immediately after that order is issued. If the court does not order permanent protective placement of the individual, the petition for extension must be dismissed. If requested, a jury trial must be held. Allegations similar to those required to be proven at the probable cause hearing must be proven. The court must also appoint 2 examiners, as is required for involuntary commitments under ch. 51, to examine the individual and provide a report to the court before the hearing or trial. The court may order an extension for a period of not more than 60 days.

Subsequent Extensions of Temporary Protective Placement in an Dementia Crisis Unit

Temporary placement in the dementia crisis unit may be extended in subsequent increments of no more than 60 days each. For each such extension, a petition alleging that the individual meets the standards for temporary placement in the dementia crisis unit must be filed no later than 10 days prior to the expiration of the most-recently issued order for temporary placement. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary protective placement. The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. A trial by a jury must be provided if demanded by the individual or his or her attorney or guardian ad litem. After the hearing, if grounds for continued placement of the individual are proven, the court may issue an order extending the temporary placement for up to 60 days.

Temporary Transfer of a Protectively Placed Individual With Dementia to a Dementia Crisis Unit

Current Law

Under current law, an individual under a protective placement order may not be transferred to any facility for which commitment procedures are required under ch. 51.

The Draft

The draft authorizes the court to order the transfer of an individual with dementia who is under a protective placement order to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, for a period not to exceed 45 days, as described below.

Petition. The draft provides that any of the following may file a petition for transfer of an individual to a dementia crisis unit: the individual's guardian, a county department (or agency with which it contracts), DHS, or the protective placement facility.

A petition for transfer of an individual who is under a protective placement order to a dementia crisis unit must allege all of the following:

- (a) The individual has been diagnosed with dementia or appears to have dementia.

(b) The individual has engaged in behavior that creates a substantial risk of serious physical harm to himself or herself or others as manifested by recent acts or omissions.

(c) A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the following are true:

1. The physician has determined with reasonable probability and documented in writing that the behavior is not caused by a physical condition or illness that could be treated safely and appropriately in a setting other than a dementia crisis unit.

2. The physician has determined with reasonable probability that the individual's behavior or condition may be improved by transfer to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

(d) Unless the individual is temporarily transferred to a dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the individual will incur a substantial probability of being subject to a change in permanent placement to a more restrictive setting due to the inability of the current placement facility to provide for the safety of the individual or others due to the behavior of the individual. The substantial probability of a change in placement to a more restrictive setting must be shown by the following:

1. Evidence of recent acts, attempts, or behavior of the individual, a pattern of recent acts or omissions by the individual, or by evidence that the individual or others are placed at substantial risk of serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual.

2. Evidence of the facility's response to the individual's acts, attempts, omissions, or threats described above, as documented in records maintained by the facility.

(e) The protective placement facility has made reasonable efforts to address or accommodate the behavior or condition for which behavioral or psychiatric evaluation, diagnosis, services, or treatment in a dementia crisis unit is sought and these steps are documented in the individual's plan of care.

(f) The proposed placement is in an environment that is appropriate for the individual.

(g) The protective placement facility has prepared detailed documentation of the behaviors or condition of the individual that necessitate inpatient behavioral or psychiatric evaluation, diagnosis, services, or treatment, including detailed information regarding the physical examination conducted and efforts taken by the facility to address or accommodate the individual's behavior, and provides this documentation to the dementia crisis unit.

(h) One of the following is true:

1. The protective placement facility has a plan in place for the orderly return of the individual upon discharge from the dementia crisis unit, which specifies the conditions under which the individual will be readmitted to the facility, and a copy of the plan is included with the petition.

2. The protective placement facility has determined that readmission of the individual to the facility upon discharge from the dementia crisis unit is not in the best interests of the individual, and includes, with the petition, specific factual information supporting this conclusion.

Consent of Guardian and County Department Required. Under the draft, the written consent of the individual's guardian and the county department are required in

order to carry out a transfer to a dementia crisis unit, except in the case of an emergency transfer, as described below.

Hearing; Order to Transfer. The court must hold a hearing within 72 hours after the filing of a petition for transfer. At the request of the individual or his or her counsel or a guardian ad litem, the hearing may be postponed for up to 7 days from the date of emergency transfer.

At the hearing, the court must consider whether the standards for transfer described above have been met and whether the proposed transfer to a dementia crisis unit is in the best interests of the person under protective placement.

Following the hearing, the court must do one of the following:

(a) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to a dementia crisis unit does not meet the standards for transfer, the court must issue an order prohibiting the transfer. The court must include the information relied upon as a basis for the order and make findings based on those standards in support of the denial of the transfer.

(b) If the court finds that the individual continues to meet the standards for protective placement and the proposed transfer to a dementia crisis unit meets the standards for transfer, the court may order the transfer of the individual to a dementia crisis unit for a period not to exceed 45 days.

(c) If the court finds that the individual no longer meets the standards for protective placement the court must terminate the protective placement.

Emergency Transfer of Placement of an Individual With Dementia to Dementia Crisis Unit; Probable Cause Hearing; Order

If an emergency makes it impossible to file a petition prior to transfer to a dementia crisis unit or to obtain the prior written consent of the guardian, the individual may be transferred without the prior written consent of the guardian and without a prior court order. A petition containing all of the allegations required for temporary transfer to a dementia crisis unit, and identification of the specific facts and circumstances which made it impossible to carry out the transfer under the nonemergency procedures, must be filed immediately upon transfer.

The court must hold a hearing within 72 hours of the transfer. At the request of the subject individual, his or her counsel or guardian ad litem, the probable cause hearing may be postponed for up to 7 days from the date of the emergency transfer.

After the hearing, the court must issue an order based upon its findings, as set forth above in the description of nonemergency temporary transfer procedures. In addition to the factors that must be considered for nonemergency transfers, the court must also consider whether there is probable cause to believe the allegations that an emergency made it impossible to file a petition and carry out the transfer as a nonemergency transfer.

Transportation Upon Discharge. The order for transfer to a dementia crisis unit, and any subsequent extension of the order, must state that the county in which the original order for protective placement of the individual was issued is responsible for transportation of the individual to any facility to which placement of the individual is ordered upon discharge of the individual from the dementia crisis unit.

Extension of Temporary Transfer to a Dementia Crisis Unit

The order for temporary transfer to a dementia crisis unit may be extended for 60 days beyond the initial 45-day period of transfer if a petition for extension of the temporary placement is filed before expiration of the order for temporary placement, and

the court orders the extension after a hearing. If requested, a jury trial must be held. Allegations similar to those required to be proven at the probable cause hearing must be proven. The court must also appoint 2 examiners, as is required for involuntary commitments under ch. 51, to examine the individual and provide a report to the court before the hearing or trial.

Subsequent Extensions of Temporary Transfer to a Dementia Crisis Unit

Temporary transfer to a dementia crisis unit may be subsequently extended in increments of no more than 60 days. For each such extension, a petition alleging that the individual meets the standards for temporary transfer to the dementia crisis unit must be filed no later than 10 days prior to the expiration of the most-recently issued order for temporary transfer. If an emergency makes it impossible to file a petition sooner, a petition may be filed up to 72 hours prior to expiration of the period of temporary transfer.

The petition must be served on the individual, the individual's guardian, the individual's legal counsel, and guardian ad litem, if any, and the county department. Examination by 2 experts must be conducted and a hearing must be held. The examiner's reports must be made available 72 hours in advance of the hearing. A trial by a jury must be provided if demanded by the individual sought to be protected or his or her attorney or guardian ad litem. After the hearing, if grounds for continued transfer to the dementia crisis unit are proven, the court may issue an order extending the temporary placement for up to 60 days.

Medication and Treatment of an Individual With Dementia in a Dementia Crisis Unit

When an individual with dementia is placed or remains in a dementia crisis unit under any of the new procedures created in the draft, the director and staff of the dementia crisis unit may evaluate, diagnose and treat the individual if the individual consents. The individual has a right to refuse medication and treatment, except as provided in an order for involuntary administration of psychotropic medication as a protective service or an emergency protective service, or in a situation in which medication or treatment is necessary to prevent serious physical harm to the individual or others. The individual must be advised of these rights by the director of the dementia crisis unit or his or her designee.

Provisions Applicable to Dementia Crisis Units Used for Emergency or Temporary Protective Placements; Liability

Discharge

The draft provides that when, upon the advice of the treatment staff, the director of a dementia crisis unit to which an individual has been transferred or placed for emergency protective placement determines that the grounds for transfer or emergency placement no longer exist, he or she must notify the county department in order to arrange for transfer of the individual to a protective placement facility.

Liability

Any individual who acts in accordance with the provisions of the draft, including making a determination that an individual has or does not have dementia or evidences or does not evidence a substantial probability of harm, is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. The draft states that whoever asserts that the individual who acts in accordance with this section

has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory, and convincing.

Instr
14-1

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 51.01 (4v) of the statutes is created to read:

2 51.01 (4v) "Dementia" means deterioration or loss of intellectual faculties,
3 reasoning power, memory, and will due to organic brain disease characterized by
4 confusion, disorientation, apathy, or stupor of varying degrees that is not capable of
5 being reversed and from which recovery is impossible. "Dementia" includes
6 Alzheimer's disease.

****NOTE: The sentence requested in this definition that intertwined the concepts of competence and dementia is contrary to our drafting conventions. The general understanding of the word "dementia" does not require a determination of competence leading to the risk that someone will not notice that if you are competent with Alzheimer's disease you don't have "dementia" according to this draft. Already in this draft are instances where the having competence intertwined with the definition of dementia creates an absurd result in the draft. I have separated the concepts of dementia and competence and incorporated the language for the competence component into the draft.

****NOTE: "Competence" as typically used in the Wisconsin statutes is a legal determination that a court makes. Do you intend that an individual undergo a legal proceeding before going through the process set out in the new subchapter of ch. 55? If so, I think there are some further issues. If not, then perhaps the term "capacity" should be used to avoid unintended consequences.

7 SECTION 2. 51.01 (13) (b) of the statutes is amended to read:

8 51.01 (13) (b) "Mental illness", for purposes of involuntary commitment, means
9 a substantial disorder of thought, mood, perception, orientation, or memory which
10 grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet
11 the ordinary demands of life, but does not include dementia in which the individual
12 is not competent or alcoholism.

****NOTE: Please note that the language added to this definition implies that dementia when the individual is competent may be considered a mental illness.

13 SECTION 3. 51.12 of the statutes is created to read:

1 **51.12 Involuntary admissions under protective placement**

2 **procedures.** Admission to a dementia crisis unit as defined under s. 55.01 (1y) may
3 be made under protective placement procedures under ss. 55.59 and 55.65.

4 **SECTION 4.** 51.15 (1) (a) (intro.) of the statutes is amended to read:

5 51.15 (1) (a) (intro.) ~~A~~ Except as provided in sub. (1m), a law enforcement
6 officer or other person authorized to take a child into custody under ch. 48 or to take
7 a juvenile into custody under ch. 938 may take an individual into custody if the officer
8 or person has cause to believe that the individual is mentally ill, is drug dependent,
9 or is developmentally disabled and, based on observation and currently available
10 information, that the individual ~~is~~ ^{does} not or ~~does not appear to be~~ ^{have} incompetent resulting
11 from dementia, and that the individual evidences any of the following:

12 **SECTION 5.** 51.15 (1m) of the statutes is created to read:

13 **51.15 (1m) DETENTION OF INDIVIDUALS WITH DEMENTIA.** An individual ~~A person~~ who is not
14 competent and who has or, based on observation and currently available
15 information, ~~appears to have dementia~~ may not be detained under this section. A
16 person ^{An individual} who is not competent and has or, based on observation and currently available
17 information, appears to have dementia may be detained only as provided under s.
18 55.59 for purposes of emergency protective placement or as provided under s. 55.65
19 for purposes of transfer of protective placement.

20 **SECTION 6.** 51.20 (1) (a) 1m. of the statutes is created to read:

21 51.20 (1) (a) 1m. (If the individual is not competent, the individual, based on
22 observation and currently available information, ^{the individual} ~~does not have or appear to have~~
23 dementia. ^{or the individual has or appears to have dementia}
24 ^{but is competent}

24 **SECTION 7.** 51.61 (1) (intro.) of the statutes is amended to read:

Insert
15-24

1 51.61 (1) (intro.) In this section, “patient” means any individual who is
2 receiving services for mental illness, developmental disabilities, alcoholism or drug
3 dependency, including any individual who is admitted to a treatment facility in
4 accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed
5 under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment
6 facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those
7 conditions through the department or a county department under s. 51.42 or 51.437
8 or in a private treatment facility. In this section, “patient” also means any individual
9 who is receiving psychiatric or behavioral care or services in a dementia crisis unit,
10 as defined in s. 55.01 (1y), under subch. II of ch. 55, to the extent that provisions of
11 this section do not conflict with provisions of ch. 55 applicable to that individual.
12 “Patient” does not include persons committed under ch. 975 who are transferred to
13 or residing in any state prison listed under s. 302.01. In private hospitals and in
14 public general hospitals, “patient” includes any individual who is admitted for the
15 primary purpose of treatment of mental illness, developmental disability, alcoholism
16 or drug abuse but does not include an individual who receives treatment in a hospital
17 emergency room nor an individual who receives treatment on an outpatient basis at
18 those hospitals, unless the individual is otherwise covered under this subsection.
19 Except as provided in sub. (2), each patient shall:

****NOTE: Since the intent of this draft appears to be keeping individuals who have dementia and are incompetent out of the chapter 51 procedures, I would copy the relevant patient rights and include them in subchapter II of ch. 55.

x

20 **SECTION 8.** 51.67 of the statutes is amended to read:

21 **51.67 Alternate procedure; protective services.** If, after a hearing under
22 s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not
23 warranted and that the subject individual is a fit subject for guardianship and

1 protective placement or services, the court may, without further notice, appoint a
2 temporary guardian for the subject individual and order temporary protective
3 placement or services under ch. 55 for a period not to exceed 30 days. Temporary
4 protective placement for an individual in a center for the developmentally disabled
5 is subject to s. 51.06 (3). Any interested party may then file a petition for permanent
6 guardianship or protective placement or services, including medication, under ch.
7 55. If the individual is in a treatment facility, and the individual does not have or,
8 based on observation and currently available information, appear to have dementia
9 or is competent and has or appears to have dementia, the individual may remain in
10 the facility during the period of temporary protective placement if no other
11 appropriate facility is available. If the individual is in a treatment facility and the
12 individual is not competent and has or, based on currently available information,
13 appears to have dementia, the individual may remain in the facility during the
14 period of temporary protective placement only if the facility is designated by a county
15 as a dementia crisis unit under s. 55.55 and the facility provides an environment that
16 is appropriate for the individual. For an individual who is not competent and
17 has or,
18 based on currently available information, appears to have dementia, the court may
19 order psychotropic medication as an emergency protective service under this section
20 only as provided in s. 55.70. The court may order psychotropic medication as a
21 temporary protective service under this section for an individual who does not have
22 or appear to have dementia if it finds that there is probable cause to believe the
23 individual is not competent to refuse psychotropic medication and that the
24 medication ordered will have therapeutic value and will not unreasonably impair the
25 ability of the individual to prepare for and participate in subsequent legal
proceedings. An individual is not competent to refuse psychotropic medication if,

1 because of serious and persistent mental illness, and after the advantages and
2 disadvantages of and alternatives to accepting the particular psychotropic
3 medication have been explained to the individual, one of the following is true:

4 SECTION 9. Subchapter I (title) of chapter 55 [precedes 55.001] of the statutes
5 is created to read:

6 CHAPTER 55

SUBCHAPTER I

7 PROTECTIVE SERVICES; GENERALLY

Insert 18-9
8 →

9 SECTION 10. 55.01 (1x) of the statutes is created to read:

10 55.01 (1x) "Dementia" means deterioration or loss of intellectual faculties,
11 reasoning power, memory, and will due to organic brain disease characterized by
12 confusion, disorientation, apathy, or stupor of varying degrees that is not capable of
13 being reversed and from which recovery is impossible. "Dementia" includes
14 Alzheimer's disease.

15 SECTION 11. 55.01 (1y) of the statutes is created to read:

16 55.01 (1y) "Dementia crisis unit" means a unit or part of a unit of a public or
17 private facility that has been designated by a county department under s. 55.55 as
18 qualified and equipped to provide and competent in providing diagnosis, evaluation,
19 and treatment of dementia and medical, psychiatric, and behavioral care to
20 individuals who are not competent and have dementia and that provides a
21 therapeutic environment that is appropriate for and designed to prevent harm to
22 individuals who are not competent and have dementia.

NOTE: Creates a definition of "dementia crisis unit" for the purpose of ch. 55.

****NOTE: The last sentence requested in this definition is substantive and not appropriate material for a definition so it has been moved to a substantive provision under s. 55.55 (3).

1 SECTION 12. 55.02 (3) of the statutes is renumbered 55.02 (3) (intro.) and
2 amended to read:

3 55.02 (3) CORPORATION COUNSEL. (intro.) The corporation counsel of the county
4 in which the petition is brought may or, if requested by the court, shall assist in
5 conducting proceedings under this chapter. The corporation counsel shall assist in
6 conducting any proceedings under this chapter in which all of the following are true:

7 SECTION 13. 55.02 (3) (a) and (b) of the statutes are created to read:

8 55.02 (3) (a) The proceedings are initiated under s. 51.20 (7) (d) 1. or 51.67.

9 (b) The subject individual is not competent and has or appears to have
10 dementia.

11 SECTION 14. 55.10 (1) of the statutes is amended to read:

12 55.10 (1) TIME LIMITS. A petition for protective placement or protective services
13 shall be heard within 60 days after it is filed unless an extension of this time is
14 requested by the petitioner, the individual sought to be protected or the individual's
15 guardian ad litem, or the county department, in which case the court may extend the
16 date for hearing by up to 45 days. The court shall hear a petition for protective
17 placement that is filed under s. 55.59 (6) in conjunction with an emergency protective
18 placement in a dementia crisis unit within 45 days after it is filed. The court may
19 not extend the time for hearing a petition for protective placement that is filed under
20 s. 55.59 (6) in conjunction with an emergency protective placement in a dementia
21 crisis unit. If an individual under s. 50.06 (3) alleges that another individual is
22 making a health care decision under s. 50.06 (5) (a) that is not in the best interests
23 of the incapacitated individual or if the incapacitated individual verbally objects to
24 or otherwise actively protests the admission, the petition shall be heard as soon as
25 possible within the 60-day period.

1 ^x
SECTION 15. 55.12 (2) of the statutes is amended to read:

2 55.12 (2) Subject to s. 46.279, protective placement may be made to nursing
3 homes, public medical institutions, centers for the developmentally disabled under
4 the requirements of s. 51.06 (3), foster care services or other home placements, or to
5 other appropriate facilities, ~~but~~. Protective placement may not be made to units a
6 unit for the acutely mentally ill unless the unit is designated as a dementia crisis unit
7 under s. 55.55 and appropriate procedures under subch. II are followed. A protective
8 placement that is otherwise permissible under subch. I is not prohibited solely
9 because the placement facility has one or more units or locations designated under
10 s. 55.55 or is associated with a facility that is designated under s. 55.55. An
11 individual, other than an individual who is incompetent and who has or, based on
12 observation and currently available information, appears to have dementia, who is
13 subject to an order for protective placement or protective services may be detained
14 on an emergency basis under s. 51.15 or involuntarily committed under s. 51.20 or,
15 An individual who is subject to an order for protective placement or protective
16 services may be voluntarily admitted to a treatment facility or a dementia crisis unit
17 for inpatient care under s. 51.10 (8). No individual who is subject to an order for
18 protective placement or services may be involuntarily transferred to, detained in, or
19 committed to a treatment facility for care except under s. 51.15 or 51.20. This
20 subsection does not prohibit the placement or transfer of an individual who is not
21 competent and who has or, based on currently available information, appears to have
22 dementia in or to a dementia crisis unit as provided in s. 55.59 or 55.65. Protective
23 placement in a locked unit shall require a specific finding of the court as to the need
24 for the action.

25 [✓]
SECTION 16. 55.13 (6) of the statutes is created to read:

1 55.13 (6) For an individual who ~~is not competent and who~~ has or, based on
2 observation and currently available information, appears to have dementia,
3 involuntary administration of psychotropic medications may be provided as an
4 emergency protective service only as provided under s. 55.70.

5 **SECTION 17.** 55.135^x (1) of the statutes is amended to read:

6 55.135 (1) If, from personal observation of, or a reliable report made by a person
7 who identifies himself or herself to, a sheriff, police officer, fire fighter, guardian, if
8 any, or authorized representative of a county department or an agency with which
9 it contracts under s. 55.02 (2), it appears probable that an individual is so totally
10 incapable of providing for his or her own care or custody as to create a substantial
11 risk of serious physical harm to himself or herself or others as a result of
12 developmental disability, degenerative brain disorder, serious and persistent mental
13 illness, or other like incapacities if not immediately placed, the individual who
14 personally made the observation or to whom the report is made may take into custody
15 and transport the individual to an appropriate medical or protective placement
16 facility. An individual may be transported to a dementia crisis unit for emergency

17 protective placement only if the individual ~~is not competent and~~ has or, based on
18 observation and currently available information, appears to have dementia and only
19 as provided under s. 55.59. The person making emergency protective placement
20 shall prepare a statement at the time of detention providing specific factual
21 information concerning the person's observations or reports made to the person and
22 the basis for emergency placement. The statement shall be filed with the director
23 of the facility and with any petition under s. 55.075. At the time of emergency
24 protective placement the individual shall be informed by the director of the facility
25 or the director's designee, orally and in writing, of his or her right to contact an

1 attorney and a member of his or her immediate family and the right to have an
 2 attorney provided at public expense, as provided under s. 55.105. The director or
 3 designee shall also provide the individual with a copy of the statement by the person
 4 making emergency protective placement.

5 **SECTION 18.** 55.14 (1) (b) (intro.) of the statutes is amended to read:

6 55.14 (1) (b) (intro.) “Not competent to refuse psychotropic medication” means
 7 that, as a result of developmental disability, degenerative brain disorder, dementia,
 8 serious and persistent mental illness, or other like incapacities, and after the
 9 advantages and disadvantages of and alternatives to accepting the particular
 10 psychotropic medication have been explained to an individual, one of the following
 11 is true:

****NOTE: If the intent is for individuals whose sole diagnosis, or whose sole reason
 for incompetence, is dementia to receive psychotropic medication, I believe dementia
 needs to be added to this definition.

12 **SECTION 19.** 55.14 (1) (b) 2. of the statutes is amended to read:

13 55.14 (1) (b) 2. The individual is substantially incapable of applying an
 14 understanding of the advantages, and disadvantages of accepting treatment and the
 15 alternatives to accepting treatment to his or her condition in order to make an
 16 informed choice as to whether to accept or refuse psychotropic medication.

17 **SECTION 20.** 55.14 (3) (e) (intro.) and (4) of the statutes are amended to read:

18 55.14 (3) (e) (intro.) Unless psychotropic medication is administered
 19 involuntarily, the individual will incur a substantial probability of physical harm,
 20 impairment, injury, or debilitation or will present a substantial probability of
 21 physical harm to others. The Except as provided in par. (em), the substantial
 22 probability of physical harm, impairment, injury, or debilitation shall be evidenced
 23 by one of the following:

1 (4) A petition under this section ~~must~~ shall include a written statement signed
2 by a physician who has personal knowledge of the individual that provides general
3 clinical information regarding the appropriate use of psychotropic medication for the
4 individual's condition and specific data that indicates that the individual's current
5 condition necessitates the use of psychotropic medication. If the individual has or
6 appears to have dementia, the statement shall state that the physician has
7 determined with reasonable probability and documented in writing that the
8 behavior for which treatment with psychotropic medication is sought is not caused
9 by a physical condition or illness that could be treated successfully by means other
10 than psychotropic medication.

11 **SECTION 21.** 55.14[✓] (3) (em) and (4m) of the statutes are created to read:

12 55.14 (3) (em) In the case of an individual who has or appears to have dementia,
13 the substantial probability of physical harm, impairment, injury, or debilitation
14 under par. (e) shall be shown by evidence of recent behavior of the individual or of
15 recent acts or attempts or a pattern of recent acts or omissions by the individual or
16 by evidence that the individual or others are placed at substantial risk of serious
17 physical harm to them as evidenced by a recent overt act, attempt, or threat by the
18 individual to do serious physical harm to them.

19 (4m) In the case of an individual who has or appears to have dementia, and who
20 resides in a nursing home, as defined in s. 50.01 (3), a community-based residential
21 facility, as defined in s. 50.01 (1g), an adult family home, as defined in s. 50.01 (1),
22 or a residential care apartment complex, as defined in s. 50.01 (6d), the petition shall
23 also allege that reasonable efforts have been made to address or accommodate the
24 behavior or condition for which treatment with psychotropic medication is sought.

1 Evidence of the facility's response to the individual's behavior or condition, as
2 documented in records maintained by the facility, shall be attached to the petition.

3 SECTION 22. 55.15[✓] (1) of the statutes is amended to read:

4 55.15 (1) TRANSFERS AUTHORIZED. An individual under a protective placement
5 order may be transferred between protective placement units, between protective
6 placement facilities, or from a protective placement unit to a medical facility. The
7 individual may not be transferred, under the protective placement order, to any
8 facility for which commitment procedures are required under ch. 51. This provision
9 does not prohibit temporary transfer of an individual who is not competent and who
10 has or, based on currently available information, appears to have dementia, to a
11 dementia crisis unit as provided in s. 55.65.

12 SECTION 23. 55.18^x (1) (b) of the statutes is amended to read:

13 55.18 (1) (b) If, following an annual review of an individual's status under par.
14 (a), the individual or the individual's guardian or guardian ad litem requests
15 modification or termination of the individual's protective placement and a hearing
16 under the requirements of s. 55.10 (2) to (4) is provided, or if a hearing under the
17 requirements of s. 55.10 (2) to (4) is provided pursuant to a petition for modification
18 or termination of the protective placement, the county is not required to initiate a
19 subsequent review of the individual's status under par. (a) until the first day of the
20 11th month after the date that the court issues a final order after the hearing. A
21 petition under s. 55.61, 55.65, or 55.67 is not a request for modification or
22 termination of an individual's protective placement for purposes of this paragraph,
23 and the fact that a hearing has been held at any time under any of those sections with
24 respect to an individual does not affect the duty of the county to perform an annual
25 review of the individual's protective placement as required under par. (a).

1 (2) The county may not designate a dementia crisis unit under this section
 2 unless it finds that the facility in which the unit is located is qualified and equipped
 3 to provide, and competent in providing, diagnosis, evaluation, and treatment of
 4 dementia and medical, psychiatric, and behavioral care to individuals who are not
 5 competent and have dementia and the designated unit or part of a unit provides a
 6 therapeutic environment that is appropriate for, and designed to prevent harm to,
 7 individuals who are not competent and have dementia.

8 (3) To be designated as a dementia crisis unit under sub. (1), the facility shall
 9 make available the capability to obtain diagnoses and treatment for medical
 10 conditions but is not required to have medical facilities located on the premises.

11 (4) The county department shall solicit information and advice from the public,
 12 including family caregivers of individuals with dementia, organizations concerned
 13 with Alzheimer's disease and dementia, the treatment of mental illness, or the
 14 provision of long-term care, and any other appropriate individuals or organizations,
 15 to aid it in carrying out its responsibility to designate one or more dementia crisis
 16 units under this section.

17 (5) The county department shall implement a procedure to periodically review
 18 and update the designation of one or more dementia crisis units under this section
 19 as necessary and appropriate.

NOTE: Requires a county department to identify at least one dementia crisis unit for emergency and temporary protective placement for psychiatric evaluation, diagnosis, or treatment. A unit that has not been so identified by the county may not be used for emergency or temporary protective placements under the procedures created in the draft.

****NOTE: What does it mean to "update a designation" under sub. (5)? May the county department revoke a designation? If so, more information on how that happens should be provided here.

20 SECTION 27. 55.59 of the statutes is created to read:

1 **55.59 Emergency or temporary protective placement in a dementia**
2 **crisis unit. (1) EMERGENCY PLACEMENT AUTHORIZED; GROUNDS.** If, from personal
3 observation by, or a reliable report made by a person who identifies himself or herself
4 to, a sheriff, police officer, fire fighter, guardian, if any, or authorized representative
5 of a county department or an agency with which the county department contracts
6 under s. 55.02 (2), it appears probable that an individual is so totally incapable of
7 providing for his or her own care or custody as to create a substantial risk of serious
8 physical harm to himself or herself or others as a result of dementia, mental illness,
9 or a psychiatric condition if not immediately placed, the person who personally made
10 the observation or to whom the report is made may take an individual into custody
11 and transport the individual to a medical facility or a dementia crisis unit if all of the
12 following are true:

****NOTE: What is a psychiatric condition if it isn't a mental illness? As mentioned previously, the phrase "psychiatric condition" does not appear in chapter 51, 54, or 55. I am unsure what it refers to and if it is necessary since the individual needs to satisfy 55.08 to be protectively placed. "Psychiatric condition" is not listed as a condition for which an individual may be protectively placed.

- 13 (a) The individual is not competent and has or, based on observation and
14 currently available information, appears to have dementia.
- 15 (b) The individual has engaged in behavior that creates a substantial risk of
16 serious physical harm to himself or herself or others, as manifested by recent acts
17 or omissions.
- 18 (c) It appears probable that unless the individual is admitted to a dementia
19 crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment,
20 the individual will incur a substantial probability of physical harm, impairment,
21 injury, or debilitation or will present a substantial probability of physical harm to
22 others. The substantial probability shall be shown by evidence of recent behavior of

1 the individual or of recent acts or attempts or a pattern of recent acts or omissions
2 by the individual or by evidence that the individual or others are placed at
3 substantial risk of serious physical harm to them as evidenced by a recent overt act,
4 attempt, or threat by the individual to do serious physical harm to them.

5 (2) EMERGENCY ADMISSION TO DEMENTIA CRISIS UNIT. An individual who has been
6 detained under sub. (1) may be admitted to a dementia crisis unit if all of the
7 following are true: and documented in writing that there is a

8 (a) A physician has conducted a physical examination of the individual; has
9 determined with reasonable probability and documented in writing that the
10 behavior described in sub. (1) is not caused by a physical condition or illness that
11 could be treated safely and appropriately in a setting other than a dementia crisis
12 unit; and recommends that the individual be placed in a dementia crisis unit for
13 behavioral or psychiatric evaluation, diagnosis, services, or treatment for the
14 purpose of addressing the behavior.

***NOTE: Is "reasonable probability" the most appropriate phrase for this provision?

15 (b) The placement in a dementia crisis unit is in an environment that is
16 appropriate for the individual.

17 (3) TRANSPORTATION TO DEMENTIA CRISIS UNIT. A person who is authorized to
18 detain and transport an individual under sub. (1) may transport an individual to a
19 dementia crisis unit for admission under sub. (2) if the individual was detained at
20 a different facility under sub. (1).

21 (4) STATEMENT; RIGHT TO AN ATTORNEY. A person who takes an individual into
22 custody under sub. (1) shall prepare and sign a statement at the time of detention
23 providing specific factual information concerning the person's observations or

1 reports made to the person and the basis for taking the individual into custody under
 2 sub. (1). If the individual is admitted to a dementia crisis unit, the statement shall
 3 be filed with the director of the dementia crisis unit and with any petition under s.
 4 55.075. At the time of admission, the director of the dementia crisis unit or the
 5 director's designee shall inform the individual, orally and in writing, of his or her
 6 right to contact an attorney and a member of his or her immediate family and the
 7 right to have an attorney provided at public expense, as provided under s. 55.105.
 8 The director or designee shall provide the individual with a copy of the statement by
 9 the person making the emergency protective placement.

10 (5) FALSE STATEMENTS. Whoever signs a statement under sub. (4) while knowing
 11 the information contained in the statement to be false is guilty of a Class H felony.

12 (6) PETITION; CONTENTS. When an individual is protectively placed under this
 13 section, the person making the emergency protective placement shall immediately
 14 file a petition under s. 55.075 with the court. In addition to the allegations required
 15 under s. 55.08 (1), the petition shall allege that the grounds under subs. (1) and (2)
 16 are true.

CONVERSION PROCEDURE (a)

17 (7) HEARING. The court shall hold a preliminary hearing within 96 hours of
 18 detention, excluding Saturdays, Sundays, and legal holidays, to establish probable
 19 cause to believe the allegations of the grounds for protective placement under s. 55.08
 20 (1) and the grounds under subs. (1) and (2). An individual is considered to be
 21 detained when he or she is taken into custody for the purpose of emergency protective
 22 placement. At the request of the subject individual or his or her counsel or guardian
 23 ad litem, the court may postpone the hearing, but in no case may the postponement
 24 exceed 7 days after the date the individual was taken into custody for emergency
 25 protective placement. In the event that protective placement is not appropriate, the

Insert 29-25

admitted to the dementia crisis unit

Insert
30-3

1 court may elect to treat a petition for protective placement under this section as a
2 petition for commitment under s. 51.20 or 51.45 (13).

****NOTE: The requested language "7 days from the date of emergency protective placement" is unclear; please confirm my change in this language complies with the committee's intent.

****NOTE: The last sentence needs clarification. It seems to allow the court to involuntarily commit an individual who is incompetent and has dementia if the court finds it appropriate. This appears to contradict the intent of this draft as I understand it.

3 (8) ORDER; TEMPORARY PLACEMENT. Upon finding probable cause under sub. (7),
4 the court may order temporary protective placement for up to 45 days in a dementia
5 crisis unit, pending the hearing for permanent protective placement. If the court
6 does not find probable cause for placement in a dementia crisis unit but does find
7 probable cause for placement in a protective placement facility other than a
8 dementia crisis unit, it shall so order. The court may order any protective services
9 that may be required. The order, and any subsequent extension of the order under
10 s. 55.61, shall state that the county in which the original order for protective
11 placement of the individual was issued shall be responsible for transportation of the
12 individual to any facility to which placement of the individual is ordered upon
13 discharge of the individual from the dementia crisis unit.

14 (9) MEDICATION AND TREATMENT. When an individual is protectively placed in
15 a dementia crisis unit under this section, or remains in a dementia crisis unit
16 pursuant to an extension of an order issued under this section, the director and staff
17 of the dementia crisis unit may evaluate, diagnose and treat the individual if the
18 individual consents. The individual has a right to refuse medication and treatment
19 except as provided in an order under s. 55.14 or 55.70 or in a situation in which
20 medication or treatment is necessary to prevent serious physical harm to the
21 individual or others. The director of the dementia crisis unit or his or her designee

1 shall advise the individual of these rights. The court may order the involuntary
2 administration of psychotropic medication as an emergency protective service to the
3 individual only as provided in s. 55.70.

****NOTE: Since individuals in a dementia crisis unit must be incompetent, one would assume that at least some of them would be incapable of consenting to evaluation, diagnosis, and treatment. What happens then?

4 (10) TRANSFER. When, upon the advice of the treatment staff, the director of a
5 dementia crisis unit in which an individual has been placed for emergency or
6 temporary protective placement under this section determines that the grounds for
7 emergency or temporary protective placement no longer exist, he or she shall notify
8 the county department in order to arrange for transfer of the individual to a
9 protective placement facility under s. 55.12. described in

****NOTE: The cross-reference to s. 55.12 may need further specification since "protective placement facility" is not defined in that section.

10 (11) LIABILITY. Any individual who acts in accordance with this section,
11 including making a determination whether an individual has dementia or whether
12 an individual evidences a substantial probability of harm, is not liable for any actions
13 taken in good faith. The good faith of the actor shall be presumed in any civil action.
14 Whoever asserts that the individual who acts in accordance with this section has not
15 acted in good faith has the burden of proving that assertion by evidence that is clear,
16 satisfactory, and convincing.

17 SECTION 28. 55.61 of the statutes is created to read:

18 **55.61 Extension of temporary protective placement in a dementia**
19 **crisis unit. (1) EXTENSION AUTHORIZED.** The court may extend for up to 60 days an
20 order for temporary protective placement in a dementia crisis unit under s. 55.59 (8)
21 if the requirements of this section are met.

1 (2) PETITION. (a) *Filing; service.* Subject to par. (b), an individual under an
 2 order for temporary protective placement in a dementia crisis unit; the individual's
 3 guardian; the individual's legal counsel or guardian ad litem, if any; the department;
 4 the county department that placed the individual or provided the protective services
 5 under an order of the court; an agency with which the county department contracts
 6 under s. 55.02 (2); or any interested person may file a petition for extension of an
 7 order for temporary protective placement in a dementia crisis unit. The person filing
 8 the petition shall have the petition served on the individual, the individual's
 9 guardian, the individual's legal counsel and guardian ad litem, if any, and the county
 10 department.

11 (b) *Time limit.* Except in an emergency, if the petition described under par. (a)
 12 is being filed, the person filing the petition for extension of temporary protective
 13 placement in a dementia crisis unit shall file the petition no fewer than 10 days
 14 before the date of expiration of the period of temporary protective placement ordered
 15 under s. 55.59 (8). If an emergency makes it impossible to file a petition sooner, a
 16 petition may be filed up to 72 hours prior to expiration of the period of temporary
 17 protective placement ordered under s. 55.59 (8).

18 (c) *Allegations.* A person filing the petition under par. (a) shall allege in the
 19 petition for extension of an order for temporary protective placement in a dementia
 20 crisis unit that all of the following are true:

21 1. The individual continues to meet the standards for protective placement
 22 under s. 55.08 (1).

23 2. The individual is not competent and has dementia.

1 3. The individual has engaged in behavior that creates a substantial risk of
2 serious physical harm to himself or herself or others, as manifested by recent acts
3 or omissions. *and documented in writing that there is a*

4 4. A physician has ~~conducted a physical~~ examination of the individual who is
5 the subject of the petition; has determined *(with)* reasonable probability *(and)*
6 *documented in writing* that the behavior is not caused by a physical condition or
7 illness that could be treated safely and appropriately in a setting other than a
8 dementia crisis unit; and recommends that the individual continue placement in the
9 dementia crisis unit for behavioral or psychiatric evaluation, diagnosis, services, or
10 treatment.

*****NOTE: In the first sentence, I am unsure whether "reasonable probability" is the appropriate phrase. I think "reasonable certainty" or "has determined that there is a reasonable probability that the behavior..." would be more appropriate. Please advise which of these better evidences the committee's intent.*

11 5. Unless the individual continues placement in the dementia crisis unit for
12 behavioral or psychiatric evaluation, diagnosis, services, or treatment, the
13 individual will incur a substantial probability of physical harm, impairment, injury,
14 or debilitation or will present a substantial probability of physical harm to others.
15 The individual submitting the petition shall allege a substantial probability of
16 physical harm to the individual or others by providing evidence of recent behavior
17 of the individual or of recent acts or attempts or a pattern of recent acts or omissions
18 by the individual or by evidence that the individual or others are placed at
19 substantial risk of serious physical harm to them as evidenced by a recent overt act,
20 attempt, or threat by the individual to do serious physical harm to them.

21 6. Reasonable efforts have been made to locate an appropriate placement for
22 the individual in a less restrictive setting.

1 (3) EXAMINATION. (a) *Appointment of examiners.* Subject to par. (b), if a petition

2 is filed under this section, the court shall appoint ~~as examiners to personally examine~~

3 ~~the individual~~ ^{licensed} 2 physicians specializing in psychiatry, ^{or} ^{licensed} one physician and one licensed

4 psychologist, or ^{licensed} 2 physicians one of whom shall have specialized training in

5 psychiatry. ~~If no persons with those specialties are available,~~ ^{if} ~~the court shall appoint~~

6 ~~as examiners~~ ^{licensed} 2 physicians to personally examine the individual. The court shall

7 appoint examiners who have the specialized knowledge that the court determines to

8 be appropriate to the needs of the individual. The examiners may not be related to

9 the individual by blood, marriage, or adoption and may not have any interest in his

10 or her property.

****NOTE: Please confirm that the rewording of this provision satisfies the intent of the committee.

11 (b) *Choice of examiner.* The individual to be examined may select one of the

12 examiners appointed under par. (a) if the individual makes his or her selection

13 known to the court within 24 hours after he or she receives the petition for extension

14 of the temporary protective placement in the dementia crisis unit. The court may

15 deny the individual's selection if the examiner does not meet the requirements of par.

16 (a) or the individual's selection is not available.

****NOTE: Please confirm that the 24 hour period starts from the time the individual is served the petition and not the time the court receives the petition.

17 (c) *Right to additional examination.* If the individual, the individual's attorney,

18 or any other interested party with court permission requests, the individual who is

19 the subject of the petition has a right to secure, at his or her own expense, an

20 additional medical or psychological examination and to offer the evaluator's personal

21 testimony as evidence at the hearing. If the individual who is the subject of the

22 petition is indigent, requests an additional medical or psychological examination,

1 and has approval of the court hearing the petition, the individual's county of legal
2 residence shall pay a reasonable expense for the additional examination.

****NOTE: I do not understand why "county of legal residence" is used here. Is that different than the county of residence?

(3) (d) *Notice to examinee; remaining silent.* Before the examination, the examiner

(4) shall inform the individual who is the subject of the examination that his or her
5 statements can be used as a basis for an extension of the current temporary
6 protective placement in the dementia crisis unit, that he or she has the right to
7 remain silent, and that the examiner is required to make a report to the court even
8 if the subject individual remains silent. The issuance of such a warning to the
9 individual prior to each examination establishes a presumption that the individual
10 understands that he or she need not speak to the examiner.

Shall be informed

****NOTE: Please confirm that it is the examiner that is required to inform the individual that the statements can be used against the individual.

11 (e) *Examiner report; conclusions.* The examiners shall personally observe and
12 examine the individual at any suitable place and satisfy themselves, if reasonably
13 possible, as to the individual's mental condition. Each examiner shall make an
14 independent written report and file that report with the court. The report and
15 testimony, if any, by the examiners shall be based on beliefs to a reasonable degree
16 of medical certainty, or professional certainty if an examiner is a psychologist, in
17 regard to the existence of the facts alleged in the petition and the appropriateness
18 of various treatment modalities or facilities. If the examiners are unable to reach
19 conclusions to a reasonable degree of medical or professional certainty, the
20 examiners shall so state in their report and testimony, if any. The individual's
21 treatment records shall be available to the examiners. The individual, the
22 individual's attorney, and the individual's guardian ad litem shall have access to all

1 psychiatric and other reports at least 72 hours in advance of the hearing under sub.
2 (4).

3 (f) *Discovery.* On motion of either party, all parties shall produce at a
4 reasonable time and place designated by the court all physical evidence which each
5 party intends to introduce in evidence. Any party shall be permitted to inspect, copy,
6 photograph, or transcribe such physical evidence in the presence of a person
7 designated by the court. The order shall specify the time, place and manner of
8 making the inspection, copies, photographs, or transcriptions, and may prescribe
9 such terms and conditions as are just. The court may, if the motion is made by the
10 individual, delay the hearing for any period necessary for completion of discovery.

11 (4) HEARING. A court shall hold a hearing on the petition for extension before
12 the expiration of the order for temporary protective placement of the individual in
13 a dementia crisis unit under s. 55.59 (8). A trial by a jury shall be held if demanded
14 by the individual sought to be protected or his or her attorney or guardian ad litem.
15 The hearing shall be held as part of the same proceedings in which the petition for
16 permanent protective placement of the individual is heard. The petition shall be
17 heard immediately after the order for permanent protective placement of the
18 individual is made. If the court does not order permanent protective placement of the
19 individual, the petition under this section shall be dismissed.

20 (5) ORDER. After a hearing under sub. (4) on a petition for extension of an order
21 for temporary protective placement in a dementia crisis unit, the court shall make
22 one of the following orders and shall identify in the order the information relied on
23 as a basis for that order:

24 (a) If the court finds that the individual meets the standards for protective
25 placement under s. 55.08 (1) and the allegations under sub. (2) (c) are true, it shall

1 order continued temporary placement in the dementia crisis unit for a period not to
2 exceed 60 days from the date of expiration of the original order under s. 55.59 (8).

3 (b) If the court finds that the individual meets the standards for protective
4 placement under s. 55.08 (1) and the allegations under sub. (2) (c) are true, but that
5 the individual would be better served in a different dementia crisis unit, it shall order
6 transfer of the individual to that dementia crisis unit and temporary placement in
7 that dementia crisis unit for a period not to exceed 60 days from the date of expiration
8 of the original order under s. 55.59 (8).

9 (c) If the court finds that the individual meets the standards for protective
10 placement under s. 55.08 (1) but the allegations under sub. (2) (c) are not true, the
11 court shall order transfer of the individual to a protective placement facility under
12 s. 55.12.

13 (d) If the court finds the individual no longer meets the standards for protective
14 placement under s. 55.08 (1), it shall terminate the protective placement, as provided
15 in s. 55.17. *a person described under sub. (2)(a) shall file*

16 (6) SUBSEQUENT EXTENSIONS. A court may extend an order ~~under~~ sub. (5) (a) or
17 (b) in increments of no more than 60 days. For each such extension, [^]a petition
18 alleging that the individual meets the standards for protective placement under s.
19 55.08 (1) and that the allegations under sub. (2) (c) are true shall be filed no later than
20 10 days prior to the expiration of the most-recently issued order for temporary
21 placement. If an emergency makes it impossible to file a petition sooner, a petition
22 may be filed up to 72 hours prior to expiration of the most recently-issued order for
23 temporary placement ordered under sub. (5). The petition shall be served on the
24 individual, the individual's guardian, the individual's legal counsel and guardian ad
25 litem, if any, and the county department. Examination shall be conducted as

1 provided in sub. (3). A hearing shall be held prior to the expiration of the
2 most-recently issued order for temporary placement. A trial by a jury shall be held
3 if demanded by the individual or his or her attorney or guardian ad litem. After
4 hearing, the court shall issue an order issued as provided in sub. (5).

****NOTE: Who can file a petition for extension?

****NOTE: The provisions created in s. 55.63 are more appropriately included directly in s. 55.14 so that is where I have moved them. I found it very confusing for the provisions to be in subch. II. For example, I assume that the petition following an emergency involuntary administration of psychotropics should follow s. 55.14 procedures along with the additional s. 55.63 provisions, but that was not clear on my reading of that provision.

5 SECTION 29. 55.65 of the statutes is created to read:

6 55.65 Temporary transfer to dementia crisis unit. (1) TRANSFER

7 AUTHORIZED. An individual who is under a protective placement order, is not

8 competent, and has or, based on currently available information and observation,

9 appears to have dementia, may be transferred to a dementia crisis unit for behavioral
10 or psychiatric evaluation, diagnosis, services, or treatment for a period not to exceed
11 45 days if the requirements of this section are met.

12 (2) PETITION. An individual under protective placement; the individual's
13 guardian; the individual's legal counsel or guardian ad litem, if any; the department;
14 the county department that placed the individual or provided the protective services
15 under an order of the court; an agency with which the county department contracts
16 under s. 55.02 (2); or any interested person may file a petition at any time for
17 temporary transfer of the individual to a dementia crisis unit for behavioral or
18 psychiatric evaluation, diagnosis, services, or treatment. The petition shall be
19 served on the individual, the individual's guardian, the individual's legal counsel and
20 guardian ad litem, if any, and the county department.

1 (3) ALLEGATIONS. The person filing the petition under sub. (2) shall allege all
2 of the following in the petition:

3 (a) The individual is not competent and has been diagnosed with or, based upon
4 currently available information, appears to have dementia.

5 (b) The individual has engaged in behavior that creates a substantial risk of
6 serious physical harm to himself or herself or others as manifested by recent acts or
7 omissions.

8 (c) A physician who has personal knowledge of the individual has conducted
9 a physical examination of the individual within the past 7 days and, based on that
10 examination, all of the following are true:

and documented in writing that there is a

11 1. The physician has determined with reasonable probability and documented
12 in writing that the behavior is not caused by a physical condition or illness that could
13 be treated safely and appropriately in a setting other than a dementia crisis unit.

14 2. The physician has determined with *that there is a* reasonable probability that the
15 individual's behavior or condition may be improved by transfer to a dementia crisis
16 unit for behavioral or psychiatric evaluation, diagnosis, services, or treatment.

*****NOTE: As in other provisions, would "reasonable certainty" or a rewording of subd. 1. and 2. make a less ambiguous wording?*

17 (d) Unless the individual is temporarily transferred to a dementia crisis unit
18 for behavioral or psychiatric evaluation, diagnosis, services, or treatment, the
19 individual will incur a substantial probability of being subject to a change in
20 permanent placement to a more restrictive setting due to the inability of the current
21 placement facility to provide for the safety of the individual or others due to the
22 behavior of the individual. The person filing the petition shall allege the substantial

1 probability of a change in placement to a more restrictive setting by showing all of
2 the following:

3 1. Evidence of recent behavior of the individual or of recent acts or attempts or
4 a pattern of recent acts or omissions by the individual or by evidence that the
5 individual or others are placed at substantial risk of serious physical harm to them
6 as evidenced by a recent overt act, attempt, or threat by the individual to do serious
7 physical harm to them.

8 2. Evidence of the facility's response to behavior, acts, attempts, omissions or
9 threats identified in subd. 1., as documented in records maintained by the facility.

****NOTE: Please confirm that petitions under this subsection must show evidence
under both subds. 1. and 2.

10 (e) The protective placement facility has made reasonable efforts to address or
11 accommodate the behavior or condition for which behavioral or psychiatric
12 evaluation, diagnosis, services, or treatment in a dementia crisis unit is sought and
13 these efforts are documented in the individual's plan of care.

14 (f) The placement is in an environment that is appropriate for the individual.

15 (g) One of the following is true:

16 1. The protective placement facility has a plan in place for the orderly return
17 of the individual to the protective placement facility upon discharge from the
18 dementia crisis unit which specifies the conditions under which the individual will
19 be readmitted to the facility and a copy of the plan is included with the petition.

20 2. The protective placement facility has determined that readmission of the
21 individual to the protective placement facility upon discharge from the dementia
22 crisis unit is not in the best interests of the individual and includes with the petition
23 specific factual information supporting this conclusion.

1 (h) The protective placement facility has prepared detailed documentation of
2 the behaviors or condition of the individual that necessitate inpatient behavioral or
3 psychiatric evaluation, diagnosis, services, or treatment, including detailed
4 information about the physical examination conducted under par. (c) and efforts
5 taken by the facility under par. (e), and this documentation will be provided to the
6 dementia crisis unit.

7 (4) CONSENT OF GUARDIAN REQUIRED. No individual may be transferred under
8 this section without the written consent of the individual's guardian except in the
9 case of an emergency transfer under sub. (6).

10 (5) CONSENT OF COUNTY DEPARTMENT. No individual may be transferred under
11 this section without the written consent of the county department except in the case
12 of an emergency transfer under sub. (6).

13 (6) EMERGENCY TRANSFER; PETITION. If an emergency makes it impossible to file
14 a petition as specified in sub. (2) or to obtain the prior written consent of the guardian
15 specified in sub. (4), the individual may be transferred without the prior written
16 consent of the guardian and without a prior court order. A petition containing all of
17 the allegations in sub. (3) and identification of the specific facts and circumstances
18 which made it impossible to carry out the transfer under the nonemergency
19 procedures shall be filed immediately upon transfer.

****NOTE: Subsection (6) does not specify that a transfer may occur in an emergency without consent of the county department. Subsection (5) implies that there may be such an exemption in an emergency. I read this all to imply that, in an emergency, county department consent is still required. Is that the intent of the committee?

20 (7) HEARING. (a) The court shall order a hearing within 72 hours after an
21 individual is transferred under sub. (6) or a petition is filed under sub. (2). At the
22 request of the individual or his or her counsel or guardian ad litem, the hearing may

1 be postponed, but in no case may the postponement exceed 7 days from the date of
2 the emergency transfer.

3 (b) The court shall notify the petitioner, the individual under protective
4 placement, the individual's guardian, the individual's attorney, if any, and the county
5 department of the time and place of the hearing.

6 (c) A guardian ad litem shall be appointed to represent the individual under
7 protective placement at the hearing. If the individual is indigent, the county in
8 which the hearing is held shall be liable for guardian ad litem fees.

9 (d) The court shall refer the individual under protective placement for
10 appointment of legal counsel as provided under s. 55.105 if the individual, the
11 individual's guardian ad litem, or anyone on the individual's behalf requests that
12 counsel be appointed for the individual.

13 (e) The petitioner, the individual under protective placement, the individual's
14 guardian, the individual's guardian ad litem, and the individual's attorney, if any,
15 have the right to attend the hearing and to present and cross-examine witnesses.

16 (8) STANDARD FOR TRANSFER. In determining whether to approve a proposed or
17 emergency transfer the court shall consider all of the following:

18 (a) Whether there is probable cause to believe the allegations under sub. (3).

19 (b) Whether the proposed transfer to a dementia crisis unit is in the best
20 interests of the individual.

21 (c) In the case of an emergency transfer, whether there is probable cause to
22 believe that specific facts and circumstances specified under sub. (6) made it
23 impossible to carry out the transfer under nonemergency procedures.

24 (9) ORDER RELATING TO TRANSFER. Following the hearing under sub. (7), the
25 court shall do one of the following:

1 (a) If the court finds that the individual continues to meet the standards for
2 protective placement under s. 55.08 (1) and the allegations under sub. (3) and, if
3 applicable, sub. (6) are not true, the court shall issue an order prohibiting the
4 transfer. The court shall identify in the order the information relied upon as a basis
5 for the order and shall make findings based on the allegations under sub. (3) and, if
6 applicable, sub. (6) in support of the denial of the transfer.

7 (b) If the court finds that the individual continues to meet the standards for
8 protective placement under s. 55.08 (1) and the allegations under sub. (3) and, if
9 applicable, sub. (6) are true, the court shall order transfer to a dementia crisis unit
10 for a period not to exceed 45 days. The order and any subsequent extension of the
11 order under s. 55.67 shall state that the county in which the original order for
12 protective placement of the individual was issued shall be responsible for
13 transportation of the individual to any facility to which placement of the individual
14 is ordered upon discharge of the individual from the dementia crisis unit.

15 (c) If the court finds that the individual no longer meets the standards for
16 protective placement under s. 55.08 (1), the court shall terminate the protective
17 placement as provided in s. 55.17.

18 **(10) MEDICATION AND TREATMENT.** When an individual is placed in a dementia
19 crisis unit under this section, or remains in a dementia crisis unit pursuant to an
20 extension of an order issued under this section, the director and staff of the dementia
21 crisis unit may evaluate, diagnose, and treat the individual if the individual
22 consents. The individual has a right to refuse medication except as provided in an
23 order under s. 55.14 or 55.70, or in a situation in which medication or treatment is
24 necessary to prevent serious physical harm to the individual or others. The director
25 of the dementia crisis unit or his or her designee shall advise the individual of these

1 rights. The court may order the involuntary administration of psychotropic
2 medication as an emergency protective service to the individual only as provided
3 under s. 55.70.

4 (11) RIGHTS. When, upon the advice of the treatment staff, the director of a
5 dementia crisis unit to which an individual has been transferred under this section
6 determines that the grounds for transfer no longer exist, he or she shall notify the
7 county department in order to arrange for transfer to a protective placement facility
8 under s. 55.12.

9 (12) LIABILITY. Any individual who acts in accordance with this section,
10 including making a determination that an individual has or does not have dementia
11 or evidences or does not evidence a substantial probability of harm, is not liable for
12 any actions taken in good faith. The good faith of the actor shall be presumed in any
13 civil action. Whoever asserts that the individual who acts in accordance with this
14 section has not acted in good faith has the burden of proving that assertion by
15 evidence that is clear, satisfactory, and convincing.

16 SECTION 30. 55.67 of the statutes is created to read:

17 **55.67 Extension of temporary transfer to a dementia crisis unit. (1)**
18 EXTENSION AUTHORIZED. A court may extend for up to 60 days an order for temporary
19 transfer to a dementia crisis unit under s. 55.65 (9) if the requirements of this section
20 are met.

21 (2) PETITION. (a) *Filing; service.* Subject to par. (b), an individual under an order
22 for temporary transfer to a dementia crisis unit; the individual's guardian; the
23 individual's legal counsel or guardian ad litem, if any; the department; the county
24 department that placed the individual or provided the protective services under an
25 order of the court; an agency with which the county department contracts under s.

1 55.02 (2); or any interested person may file a petition for extension of the order for
2 temporary transfer to a dementia crisis unit. The person filing the petition shall
3 have the petition served on the individual, the individual's guardian, the individual's
4 legal counsel and guardian ad litem, if any, and the county department.

5 (b) *Time limit.* Except in an emergency, if the petition described under par. (a)
6 is being filed, the person filing the petition for extension of temporary transfer to a
7 dementia crisis unit shall file the petition no fewer than 10 days before the date of
8 expiration of the period of temporary transfer ordered under s. 55.65 (9). If an
9 emergency makes it impossible to file a petition sooner, a petition may be filed up to
10 72 hours before the expiration of the period of temporary transfer ordered under s.
11 55.65 (9).

12 (c) *Allegations.* A person filing the petition under par. (a) shall allege in the
13 petition for extension of an order for temporary transfer to a dementia crisis unit that
14 all of the following are true:

15 1. The individual continues to meet the standards for protective placement
16 under s. 55.08 (1).

17 2. The individual is not competent and has dementia.

18 3. The individual has engaged in behavior that creates a substantial risk of
19 serious physical harm to himself or herself or others, as manifested by recent acts
20 or omissions. and documented in writing that there is a

21 4. A physician has conducted a physical examination of the individual; has
22 determined with reasonable probability and documented in writing that the
23 behavior is not caused by a physical condition or illness that could be treated safely
24 and appropriately in a setting other than a dementia crisis unit; and recommends

1 that the individual continue placement in the dementia crisis unit for behavioral or
2 psychiatric evaluation, diagnosis, services, or treatment.

****NOTE: Again, is there alternative language that can replace "reasonable probability"?

3 5. Unless the individual continues placement in the dementia crisis unit for
4 behavioral or psychiatric evaluation, diagnosis, services, or treatment, the
5 individual will incur a substantial probability of physical harm, impairment, injury,
6 or debilitation or will present a substantial probability of physical harm to others.
7 The individual submitting the petition shall allege that substantial probability by
8 providing evidence of recent behavior of the individual or of recent acts or attempts
9 or a pattern of recent acts or omissions by the individual or by evidence that the
10 individual or others are placed at substantial risk of serious physical harm to them
11 as evidenced by a recent overt act, attempt, or threat by the individual to do serious
12 physical harm to them.

13 6. Reasonable efforts have been made to locate an appropriate placement for
14 the individual in a less restrictive setting.

15 (3) EXAMINATION. (a) *Appointment of examiners.* Subject to par. (b), if a petition

16 is filed under this section, the court shall appoint as examiners to personally examine

17 the individual 2 ^{licensed} physicians specializing in psychiatry, ^{or} one ^{licensed} physician and one

18 psychologist, ^{or} 2 ^{licensed} physicians one of whom shall have specialized training in

19 psychiatry. If no individuals with those specialties are available, ^{if} the court shall

20 appoint as examiners 2 ^{or licensed} physicians to personally examine the individual. The court

21 shall appoint examiners who have the specialized knowledge that the court

22 determines to be appropriate to the needs of the individual. The examiners may not

1 be related to the individual by blood, marriage, or adoption and may not have any
2 interest in his or her property.

3 (b) *Choice of examiner.* The individual to be examined may select one of the
4 examiners appointed under par. (a) if the individual makes his or her selection
5 known to the court within 24 hours after he or she receives the petition for extension
6 of the temporary protective placement in the dementia crisis unit. The court may
7 deny the individual's selection if the examiner does not meet the requirements of par.
8 (a) or the individual's selection is not available.

9 (c) *Right to additional examination.* If the individual, the individual's attorney,
10 or any other interested party with the court's permission requests, the individual has
11 a right at his or her own expense to secure an additional medical or psychological
12 examination and to offer the evaluator's personal testimony as evidence at the
13 hearing. If the individual who is the subject of the petition is indigent, requests an
14 additional medical or psychological examination, and has approval of the court
15 hearing the petition, the individual's county of residence shall pay a reasonable
16 expense for the additional examination.

Who is the subject of the examination shall be informed

17 (d) *Notice to examinee; remaining silent.* Before the examination, the examiner
18 shall inform the individual that his or her statements can be used as a basis for an
19 extension of the current temporary placement in the dementia crisis unit, that he or
20 she has the right to remain silent and that the examiner is required to make a report
21 to the court even if the individual remains silent. The issuance of such a warning
22 to the individual prior to each examination establishes a presumption that the
23 individual understands that he or she need not speak to the examiner.

24 (e) *Examiner report; conclusions.* The examiners shall personally observe and
25 examine the individual at any suitable place and satisfy themselves, if reasonably

1 possible, as to the individual's mental condition. Each examiner shall make an
2 independent written report and file that report with the court. The individual's
3 treatment records shall be available to the examiners. The report and testimony, if
4 any, by the examiners shall be based on beliefs to a reasonable degree of medical
5 certainty, or professional certainty if an examiner is a psychologist, in regard to the
6 existence of the facts alleged in the petition and the appropriateness of various
7 treatment modalities or facilities. If the examiners are unable to reach conclusions
8 to a reasonable degree of medical or professional certainty, the examiners shall so
9 state in their report and testimony, if any. The individual, the individual's attorney,
10 and the guardian ad litem shall have access to all psychiatric and other reports at
11 least 72 hours in advance of the hearing under sub. (4).

12 (f) *Discovery.* On motion of either party, all parties shall produce at a
13 reasonable time and place designated by the court all physical evidence which each
14 party intends to introduce in evidence at the hearing under sub. (4). Any party shall
15 be permitted to inspect, copy, photograph, or transcribe such physical evidence in the
16 presence of a person designated by the court. The order shall specify the time, place
17 and manner of making the inspection, copies, photographs, or transcriptions, and
18 may prescribe such terms and conditions as are just. The court may, if the motion
19 is made by the individual, delay the hearing for any period necessary for completion
20 of discovery.

21 (4) HEARING. A hearing on the petition for extension shall be held prior to the
22 expiration of the order for temporary transfer of the individual to a dementia crisis
23 unit under s. 55.65 (9). A trial by a jury shall be held if demanded by the individual
24 sought to be protected or his or her attorney or guardian ad litem.

1 (5) ORDER. After a hearing under sub. (4) on a petition for extension of an order
2 for temporary transfer to a dementia crisis unit, the court shall make one of the
3 following orders and shall identify in the order the information relied on as a basis
4 for that order:

5 (a) If the court finds that the allegations under sub. (2) (c) are true, it shall order
6 continued temporary transfer to the dementia crisis unit for a period not to exceed
7 60 days from the date of expiration of the original order under s. 55.65 (9).

8 (b) If the court finds that the allegations under sub. (2) (c) are true, but that the
9 individual would be better served in a different dementia crisis unit, it shall order
10 transfer of the individual to that dementia crisis unit and temporary placement in
11 that dementia crisis unit. — for no longer than 60 days

****NOTE: Do you want the 60 day time limit here?

12 (c) If the court finds that the allegations under sub. (2) (c) 2. to 6. are not true,
13 but the individual continues to meet the standards for protective placement under
14 s. 55.08 (1), the court shall order transfer of the individual to a facility for permanent
15 protective placement.

16 (d) If the court finds the individual no longer meets the standards for protective
17 placement under s. 55.08 (1), it shall terminate the protective placement as provided
18 in s. 55.17. a person described under sub. (2)(a) shall file

19 (6) SUBSEQUENT EXTENSIONS. The court may extend an order under (5) (a) or (b)
20 in increments of no more than 60 days. For each such extension, a petition alleging
21 that the individual meets the standards under sub. (2) (c) shall be filed no later than
22 10 days prior to the expiration of the most-recently issued order for temporary
23 transfer to a dementia crisis unit. If an emergency makes it impossible to file a
24 petition sooner, a petition may be filed up to 72 hours prior to expiration of the period

1 of temporary transfer ordered under sub. (5). The petition shall be served on the
2 individual, the individual's guardian, the individual's legal counsel and guardian ad
3 litem, if any, and the county department. Examination shall be conducted as
4 provided in sub. (3). A hearing shall be held prior to the expiration of the
5 most-recently issued order for temporary placement. A trial by a jury shall be held
6 if demanded by the individual or his or her attorney or guardian ad litem. After the
7 hearing, the court shall issue an order as provided in sub. (5).

****NOTE: Who can file a petition for subsequent extensions?

8 SECTION 31. 55.70 of the statutes is created to read:

9 **55.70 Emergency involuntary administration of psychotropic**
10 **medications.** (1) In this section:

****NOTE: I assume this section does not apply just to individuals who are incompetent, as that term is applied through the rest of the draft, and have dementia. This section is one provision where incorporating the concept of competence into the definition of dementia does not work well.

11 (a) "Involuntary administration of psychotropic medication" has the meaning
12 given in s. 55.14 (1) (a).

****NOTE: It appears that the definition of "involuntary administration of psychotropic medication" is identical to that in s. 55.14. I assume the definition is to remain the same as in s. 55.14 in the event that the definition under s. 55.14 changes so I have cross-referenced that definition here instead of repeating it.

13 (b) "Not competent to refuse psychotropic medication" means that, as a result
14 of dementia, serious and persistent mental illness, or other like incapacities, and
15 after the advantages and disadvantages of and alternatives to accepting the
16 particular psychotropic medication have been explained to an individual, any of the
17 following are true:

18 1. The individual is incapable of expressing an understanding of the
19 advantages and disadvantages of accepting treatment and the alternatives to
20 accepting treatment.

1 2. The individual is substantially incapable of applying an understanding of
2 the advantages and disadvantages of accepting treatment and the alternatives to
3 accepting treatment to his or her condition in order to make an informed choice as
4 to whether to accept or refuse psychotropic medication.

5 (c) "Protest" has the meaning given in s. 55.14 (1) (c).

****NOTE: It appears that the definition of "protest" is identical to that in s. 55.14. I assume the definition is to remain the same as in s. 55.14 in the event that the definition under s. 55.14 changes so I have cross-referenced that definition here instead of repeating it.

6 (d) "Psychotropic medication" has the meaning given in s. 55.14 (1) (d).

****NOTE: It appears that the definition of "psychotropic medication" is identical to that in s. 55.14. I assume the definition is to remain the same as in s. 55.14 in the event that the definition under s. 55.14 changes so I have cross-referenced that definition here instead of repeating it.

7 (2) Involuntary administration of psychotropic medication may be provided as
8 an emergency protective service to an individual who has or, based on observation
9 and currently available information, appears to have dementia, if all of the following
10 are true:

****NOTE: Who may provide this emergency protective service? Who determines whether pars. (a) to (g) have been satisfied? Does a court make that determination?

11 (a) A physician has prescribed the psychotropic medication for the individual.

12 (b) The individual is not competent to refuse psychotropic medication.

13 (c) The individual's condition or symptoms for which psychotropic medication
14 has been prescribed are likely to be improved or alleviated by administration of
15 psychotropic medication and the individual is likely to respond positively to
16 psychotropic medication.

17 (d) Unless psychotropic medication is administered involuntarily, the
18 individual will incur a substantial probability of physical harm, impairment, injury,
19 or debilitation or will present a substantial probability of physical harm to others.

1 (e) For an individual who is not currently placed in a dementia crisis unit, there
2 is a substantial likelihood that unless psychotropic medication is administered
3 involuntarily, the individual will be subject to involuntary placement in a dementia
4 crisis unit under s. 55.59.

5 (f) If the individual resides in a nursing home, as defined in s. 50.01 (3), a
6 community-based residential facility, as defined in s. 50.01 (1g), an adult family
7 home, as defined in s. 50.01 (1), or a residential care apartment complex, as defined
8 in s. 50.01 (6d), all of the following are true:

9 1. A physician has conducted a physical examination of the individual and a
10 physician has determined with reasonable probability and documented in writing
11 that the behavior is not caused by a physical condition or illness that could be treated
12 successfully by means other than psychotropic medication.

13 2. The facility has made reasonable efforts to address or accommodate the
14 behavior or condition for which involuntary administration of psychotropic
15 medication is requested and these efforts are documented in the individual's plan of
16 care.

17 3. The facility has prepared detailed documentation of the behaviors or
18 condition of the individual for which involuntary administration of psychotropic
19 medication is sought.

20 (g) The individual meets the standards for protective services under s. 55.08
21 (2).

****NOTE: Section 55.08 (2) requires a court's determination of incompetence. This means that psychotropic medication may not be administered under this section until after a court hearing. Is that the intent? Is a court order required to satisfy this paragraph?

****NOTE: One of the standards for protective service is that the individual has a developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacity. Since you have defined dementia separately, that implies

that dementia is not in the category of degenerative brain disorder or mental illness, though this is really unclear. I read this provision to say that an individual with dementia must also have another mental condition to receive involuntary psychotropic medication as a protective service. As drafted, having dementia only is not sufficient to receive emergent voluntary admission of psychotropic medication under this section. Depending on the resolution of this issue, created s. 55.50 may have to be changed to exempt this section.

1 (3) Any county department or agency with which the county department
2 contracts under s. 55.02 (2) that provides involuntary administration of psychotropic
3 medication as an emergency protective service to an individual under sub. (2) shall
4 immediately file with the court a petition for involuntary administration of
5 psychotropic medication to the individual under s. 55.14. The petition shall be served
6 on the individual, the individual's guardian, the individual's legal counsel, and
7 guardian ad litem, if any, and the county department. The court shall hold a
8 preliminary hearing shall be held within 72 hours after the first dose of medication
9 is administered under sub. (2), excluding Saturdays, Sundays, and legal holidays, to
10 establish probable cause that the criteria under s. 55.14 are present. The county
11 department or agency shall provide the individual with written notice of, and orally
12 inform the individual of, the time and place of the preliminary hearing.

13 (4) If the individual is not under guardianship, a petition for guardianship
14 shall accompany the petition for involuntary administration of psychotropic
15 medication under sub. (3).

****NOTE: Subsection (4) referenced a petition filed under sub. (2). As I read sub.
(2), there is no petition filed under that subsection. Please confirm that it is correct that
the guardianship petition must accompany the petition under s. 55.14 referenced in sub.
(3).

16 (5) Upon finding probable cause under sub. (3) and finding that the medication
17 will not unreasonably impair the ability of the individual to prepare for and
18 participate in subsequent legal proceedings, the court may order involuntary
19 administration of psychotropic medication to continue to be provided as an

1 emergency protective service to the individual for up to 30 days after the date of the
2 order, pending the hearing under s. 55.14. If the individual is not under
3 guardianship, the court shall appoint a temporary guardian.

****NOTE: When does the court appoint the temporary guardian? Does the court have to follow chapter 54 procedures and standards to appoint the temporary guardian? If not, this would be a fast track way to have a guardian appointed avoiding the procedures of chapter 54. Is that the intent?

4 (6) If the individual is under guardianship, a good faith effort shall be made
5 to obtain the consent of the guardian before involuntary administration of
6 psychotropic medication is provided as an emergency protective service.

****NOTE: What happens if the guardian does not consent?

7 SECTION 32. 55.73 of the statutes is created to read:

8 55.73 County reports. (1) The county department shall prepare and submit
9 a report to the department that identifies any dementia crisis unit that it has
10 designated under s. 55.55 and the capacity of each designated unit. The county shall
11 include in the report a description of the process used to solicit information and
12 advice from the public and a summary of the information and advice received. The
13 county shall update the report whenever the county makes a new designation or
14 revokes a designation from a unit.

****NOTE: When is the first report due from a county? This report is a requirement and it could be construed that the report is required immediately upon the effective date and before the county department designates any unit.

****NOTE: I believe that this is the only provision stating that the county may revoke a designation. Are there criteria for revoking a designation? Does the unit receive notice and a hearing before revocation? What happens to the residents of a unit with a revoked designation? Perhaps more information answering these questions should be added to s. 55.55.

15 (2) The county department shall annually prepare and submit a report to the
16 department that states the total number of petitions filed in the county under 55.59
17 and 55.65 and the total number of those petitions that resulted in a placement in a
18 dementia crisis unit.

Before the first day of the 13th month beginning after the effective date of this subsection... [LRB inserts date]

1 **SECTION 33.** 55.74 of the statutes is created to read:

2 **55.74 Department reports to the legislature.** By June 30 of each
3 even-numbered year, the department shall submit to the legislature under s. 13.172
4 (2) a report that includes all of the following:

5 (1) Identification of the dementia crisis units designated by counties under s.
6 55.55 and the capacity of those units, as provided in reports submitted by counties
7 under s. 55.73 (1).

8 (2) A summary of the procedures used by counties to solicit information and
9 advice from the public when making dementia crisis unit designations under s.
10 55.55, as provided in reports submitted under s. 55.73 (1).

11 (3) A summary of the information provided to the department by counties
12 under s. 55.73 (2).

****NOTE: There is no delayed effective date on this bill. That means that all requirements go into effect on the day after publication with no preparation lead time. Is that what you intended?

13

(END)

D-note